

§ 708.37

§ 708.37 Will an employee whose complaint is denied by a final agency decision be reimbursed for costs and expenses incurred in pursuing the complaint?

No. If your complaint is denied by a final agency decision, you may not be reimbursed for the costs and expenses you incurred in pursuing the complaint.

§ 708.38 How is a final agency decision implemented?

(a) The Head of Field Element having jurisdiction over the contract under which you were employed when the alleged retaliation occurred, or EC Director, will implement a final agency decision by forwarding the decision and order to the contractor, or subcontractor, involved.

(b) A contractor's failure or refusal to comply with a final agency decision and order under this regulation may result in a contracting officer's decision to disallow certain costs or terminate the contract for default. In the event of a contracting officer's decision to disallow costs or terminate a contract for default, the contractor may file a claim under the disputes procedures of the contract.

§ 708.39 Is a decision and order implemented under this regulation considered a claim by the government against a contractor or a decision by the contracting officer under sections 6 and 7 of the Contract Disputes Act?

No. A final agency decision and order issued pursuant to this regulation is not considered a claim by the government against a contractor or "a decision by the contracting officer" under sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 606).

§ 708.40 Are contractors required to inform their employees about this program?

Yes. Contractors who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name and address of the DOE office

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where you can file a complaint under this part.

[64 FR 37397, July 12, 1999]

§ 708.41 Will DOE ever refer a complaint filed under this part to another agency for investigation and a decision?

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

[64 FR 37397, July 12, 1999]

§ 708.42 May the deadlines established by this part be extended by any DOE official?

Yes. The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

[64 FR 37397, July 12, 1999]

§ 708.43 Does this rule impose an affirmative duty on DOE contractors not to retaliate?

Yes. DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in §§ 708.5(a)–(c).

[65 FR 6319, Feb. 9, 2000; 65 FR 9201, Feb. 24, 2000]

PART 709—POLYGRAPH EXAMINATION REGULATIONS

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AUTHORITY: 42 U.S.C. 2011, *et seq.*, 42 U.S.C. 7101, *et seq.*, 42 U.S.C. 7383h.

SOURCE: 64 FR 70975, Dec. 17, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 709.1 What is the purpose of this part?

This part:

(a) Describes the categories of individuals who are eligible for counterintelligence-scope polygraph testing; and

(b) Provides guidelines for the use of counterintelligence-scope polygraph examinations and for the use of exculpatory polygraph examinations, upon the request of an individual, in order to resolve counterintelligence investiga-

tions and personnel security issues; and

(c) Provides guidelines for protecting the rights of individual DOE, and DOE contractor, and employees subject to this rule.

§ 709.2 What is the scope of this part?

This part includes:

(a) A description of the conditions under which DOE may administer and use polygraph examinations;

(b) A description of the positions which DOE may subject to polygraph examination;

(c) Controls on the use of polygraph examinations; and

(d) Safeguards to prevent unwarranted intrusion into the privacy of individuals.

§ 709.3 What are the definitions of the terms used in this part?

For purposes of this part:

Accelerated Access Authorization Program or AAAP means the program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, and a counterintelligence-scope polygraph examination consistent with this part.

Access means the admission of DOE and contractor employees and applicants for employment, and other individuals assigned or detailed to Federal positions at DOE to the eight categories of positions identified in § 709.4(a)(1)–(8).

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

Adverse personnel action means

(1) With regard to a DOE employee, the removal, suspension for more than 14 days, reduction in grade or pay, or a furlough of 30 days or less as described in 5 U.S.C. Chapter 75; or

(2) With regard to a contractor employee, the discharge, discipline, or denial of employment or promotion, or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

Contractor means a DOE contractor or a subcontractor at any tier.